

123 FERC ¶ 61,275
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Portland Natural Gas Transmission System

Docket No. CP08-70-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued June 19, 2008)

1. On January 31, 2008, Portland Natural Gas Transmission System (PNGTS) filed a petition for declaratory order requesting that the Commission determine that the physical capacity across the PNGTS system from Pittsburg, New Hampshire to Dracut, Massachusetts will be 168,000 Mcf per day (Mcf/d) on a firm year-round basis once the Maritimes and Northeast Pipeline, LLC's (Maritimes) Phase IV Expansion facilities¹ are placed in service. For the reasons discussed below, we will grant PNGTS's petition.

I. Background

2. PNGTS is a partnership organized and existing under the laws of the State of Maine. PNGTS is a natural gas company as defined by section 2(6) of the NGA and is in the business of transporting natural gas in interstate commerce under authorizations granted by and subject to the jurisdiction of the Commission.

A. PNGTS's Certificate Authorizations

3. In July 1996, the Commission contemporaneously issued preliminary determinations in two proceedings in which PNGTS² and Maritimes³ sought authorizations to construct pipeline facilities in the Northeastern United States. Since the

¹ See *Maritimes & Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,137 (2007). The Phase IV Expansion facilities are proposed to be placed in service on November 1, 2008.

² *Portland Natural Gas Transmission System*, 76 FERC ¶ 61,123 (1996).

³ *Maritimes & Northeast Pipeline, L.L.C.*, 76 FERC ¶ 61,124 (1996).

southern portion of each proposed pipeline would run along essentially the same route, the Commission urged PNGTS and Maritimes to consider a jointly owned pipeline where their proposed routes converged.⁴ As relevant here, PNGTS subsequently amended its pending applications and also filed, jointly with Maritimes, an additional application to construct facilities consisting of a 101-mile long, 30-inch diameter pipeline extending from Westbrook, Maine, to Dracut, Massachusetts, as well as various laterals (joint facilities).

4. In an order issued on July 31, 1997, the Commission made a preliminary determination that, pending favorable environmental review, authorized PNGTS to construct and operate an individually-owned, 24-inch diameter pipeline that would extend approximately 142 miles from the United States-Canada border near Pittsburg, New Hampshire to Westbrook, Maine.⁵ At the border, PNGTS's facilities would interconnect with facilities of TransQuebec & Maritimes Pipeline, Inc. (TQM). The July 31 Order also made a preliminary determination to authorize PNGTS to provide service using its capacity on the joint facilities from Wells, Maine to Dracut, Massachusetts,⁶ and to construct and operate the remaining joint facilities from Wells, Maine to Westbrook, Maine.

5. The July 31 Order found that:

In the first year of service, PNGTS will have a capacity of 178,000 Mcf per day on its 24-inch mainline and a capacity of 169,400 Mcf per day on the joint facilities. In subsequent years, the upstream mainline and PNGTS' share of the joint facilities' capacity will increase to 210,000 Mcf per day. Therefore, PNGTS must revise its initial rates to reflect billing

⁴ Although the northern portions of each proposed pipeline were different, the southernmost part of each pipeline's proposed route essentially converged from a point near Westbrook, Maine, to a point in Dracut, Massachusetts.

⁵ *Portland Natural Gas Transmission System*, 80 FERC ¶ 61,134 (1997) (July 31 Order).

⁶ In a contemporaneous order, the Commission authorized PNGTS to construct and Maritimes to operate the 66-mile segment of the proposed joint facility, extending from Dracut, Massachusetts to Wells, Maine and certain lateral facilities. *Maritimes & Northeast Pipeline, L.L.C.*, 80 FERC ¶ 61,136 (1997).

determinants based on 178,000 Mcf per day for the first year and design the rates for the subsequent years to reflect billing determinants based on 210,000 Mcf per day.⁷

The order also noted that PNGTS had not entered into contracts for the full capacity of its system and placed PNGTS at risk for the recovery of the costs for the unsubscribed capacity.⁸

6. The July 31 Order explained that the increase in capacity on the PNGTS system after the first year of service would result from the installation of additional compression needed to accommodate Maritimes' proposal to construct upstream facilities to deliver eastern Canadian reserves that would be placed in service one year after PNGTS began service. The July 31 Order noted PNGTS' statement that the additional compression would be provided by TQM, which intended to install additional compression on its facilities in Canada to be able to provide the appropriate pressure to accommodate both PNGTS' deliveries of western Canadian gas and Maritimes' deliveries of eastern Canadian gas.⁹ The Commission conditioned PNGTS' certificate authorizations so that it could not start construction until TQM received the necessary approvals for the Canadian facilities.¹⁰

7. On September 24, 1997, the Commission issued certificates to PNGTS authorizing construction and operation of the individually-owned pipeline facilities between Pittsburg, New Hampshire and Westbrook, Maine, construction and operation of the joint facilities between Westbrook, Maine and Wells, Maine, and the operation of the joint facilities between Wells, Maine and Dracut Massachusetts.¹¹ The September 24 Order also addressed PNGTS' request for rehearing contending that the Commission erred in requiring PNGTS to revise its rates to reflect 210,000 Mcf/d of capacity after the first year of operation and in placing it at risk for the increased unsubscribed capacity. PNGTS pointed out that the July 31 Order assumed that the Maritimes upstream facilities would begin operating in 1999, but that exactly when these facilities would go on line

⁷ July 31 Order at 61,448.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 61,450.

¹¹ *Portland Natural Gas Transmission System*, 80 FERC ¶ 61,345 (1997) (September 24 Order).

could not be determined precisely. PNGTS also asserted that the increase in pressure and the increased capacity capability would occur only when TQM installed the planned new compression on its system, but TQM would not do so until the compression is needed to match the line pressures created by Maritimes' deliveries into the joint facilities. PNGTS stated that it was entirely possible that these events would occur more than 12 months after PNGTS began operations. Moreover, PNGTS stated, TQM's increased compression might not increase the peak day capacity to 210,000 Mcf/d.

8. The September 24 Order granted PNGTS' request for rehearing finding that it is "premature to require PNGTS to revise its rates or to be placed at risk for higher capacity after its first year of operation. It is not certain at this time when the additional compression will go into service or the actual amount of increased compression and its effect on the capacity of the PNGTS system. We will instead review this matter when PNGTS makes its section 4 filing."¹²

9. The Commission also conditioned the authority issued to PNGTS and Maritimes to construct the joint facilities on the filing of Definitive Agreements between the parties setting forth the terms under which the pipelines would construct, own, and operate the joint facilities.¹³ PNGTS and Maritimes filed the Definitive Agreements, which included an ownership agreement, engineering and construction management agreement, and operating agreement, which were approved by the Commission.¹⁴ Among other things, the Definitive Agreements provide for expansions of the joint facilities and set forth the procedures whereby one owner may propose an expansion and the other owner may opt to participate in it. PNGTS placed its pipeline into service in March of 1999.

B. The PNGTS/Maritimes Settlement Regarding Definitive Agreements and Maritimes' Phase IV Expansion

10. On December 18, 2006, PNGTS and Maritimes filed a settlement proposing modifications to the Definitive Agreements in order to resolve a variety of issues between the two parties involving the joint facilities (December 18 Settlement). Among other

¹² *Id.* at 62,146.

¹³ *Maritimes & Northeast Pipeline, L.L.C.*, 80 FERC ¶ 61,136, at 61,477 (1997).

¹⁴ *See Maritimes & Northeast Pipeline, L.L.C.*, 81 FERC ¶ 61,166 (1997). On December 23, 2002, the Commission issued an order accepting an uncontested settlement and approving an amendment to the Definitive Agreements. *Maritime & Northeast Pipeline, L.L.C.*, 101 FERC ¶ 61,348 (2002).

things, the December 18 Settlement provided for PNGTS to withdraw its protest to Maritimes' Phase IV Expansion project. By order issued on March 12, 2007, the Commission approved, in part, the December 18 Settlement.¹⁵ Among other things, the Commission noted that the withdrawal of PNGTS' opposition to the Maritimes Phase IV Expansion enabled the Commission to more expeditiously process that application.¹⁶

II. Petition for Declaratory Order

11. PNGTS requests that the Commission determine that PNGTS's system-wide firm year round operationally available capacity from Pittsburg, New Hampshire to Dracut, Massachusetts as of November 1, 2008, will be 168,000 Mcf/d and that PNGTS will not be in violation of the NGA or other legal obligations by denying firm service requests that, in combination with existing contracts requiring service after October 31, 2008, would obligate PNGTS to transport in excess of 168,000 Mcf/d on a firm year-round basis from Pittsburg to Dracut.¹⁷

12. PNGTS maintains that the Commission orders authorizing its stand-alone facilities and its share of the joint facilities did not establish a certificated firm level of service. PNGTS relies on the Commission's September 24 Order which it contends deferred the issue of the capacity of the PNGTS system to PNGTS's section 4 rate filing.¹⁸ While acknowledging that it has been able to transport volumes in excess of 168,000 Mcf/d, PNGTS maintains that as of November 1, 2008, when the Maritimes Phase IV Expansion is placed in service, the level of capacity previously available on PNGTS will diminish for the following reasons.

¹⁵ *Maritimes & Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,193 (2007).

¹⁶ *Id.* at P 6.

¹⁷ PNGTS requests CEII treatment for information contained in Appendices D, E, and G, and for that information that is referenced in the text of the petition pursuant to 18 C.F.R. § 388.112 (2007). On March 12, 2008, PNGTS filed a revision to Appendix E (Revised Appendix E). PNGTS states that the revised flow diagrams do not affect the conclusion that as of November 1, 2008, PNGTS' capacity will not exceed 168,000 Mcf/d on a firm year round basis.

¹⁸ *Citing* September 24 Order at 62,146, 62,158. PNGTS states that during 2001-2002, the pipeline filed and settled a section 4 rate case without resolving the issue of PNGTS's certificated capacity.

13. First, PNGTS explains that its capacity is a function of compression installed upstream on TQM. It explains that pursuant to the amended interconnect agreement between PNGTS and TQM, TQM is contractually obligated to maintain inlet pressures into PNGTS's facilities at Pittsburg at 1,255 psig. PNGTS states that Canada's National Energy Board does not authorize construction of new facilities without evidence of the existence of a long-term market. It states that because many of the upstream TQM transportation contracts serving PNGTS will be expiring within the next several months, there is no contractual basis for obligating TQM to construct more compression.

14. Second, PNGTS claims that operation of Maritimes' Phase IV Expansion will increase the pressure within the shared pipeline and reduce the firm capability on PNGTS below previous levels. PNGTS states that the Phase IV Expansion will use pipeline facilities jointly owned by Maritimes and PNGTS south of Westbrook, Maine, thereby increasing the pressure at Westbrook, as well as volumes moved within the shared pipeline. Once the Phase IV Expansion is placed in service on November 1, 2008, PNGTS explains that the pressure differential on its system between Pittsburg, New Hampshire and Westbrook, Maine will decrease due to an increase in its contractual pressure obligation at Westbrook.

15. PNGTS asserts that a grant of its request will serve the public interest by ensuring that it is not placed in legal jeopardy for: (1) agreeing, as requested by the Commission, to jointly own the joint facilities; and (2) resolving disputes concerning the constraints embodied in Maritimes' Phase IV Expansion.

16. PNGTS also states that it will have more than sufficient capacity to meet all of its contractual obligations for service after October 31, 2008, that are now in effect, and states that it is not aware of any interest in additional firm service that would exceed the 168,000 Mcf/d capacity level. PNGTS also notes that following the in-service date of the Maritimes Phase IV Expansion, the total capacity serving the region will increase. PNGTS emphasizes that it is not seeking to abandon any facilities, nor is it seeking to abandon any contractual commitment. It also maintains that the rate consequences of its petition should be addressed in its next rate case consistent with Commission precedent.¹⁹

¹⁹ *Citing Trunkline Gas Co.*, 94 FERC 61,381, at 62,419 n.12 (2001); *Panhandle Eastern Pipeline Co.*, 77 FERC ¶ 61,284, at 62,254 (1996); *NorAm Gas Transmission Co.*, 75 FERC ¶ 61,127, at 61,428 (1996).

III. Notice, Interventions, Comments, Protests, and Answers

17. Notice of PNGTS's application was published in the *Federal Register* on February 20, 2008 (73 Fed. Reg. 9318). The Canadian Association of Petroleum Producers (CAPP), the Maine Public Utilities Commission, Maritimes, the New Hampshire Public Utilities Commission (New Hampshire PUC), the PNGTS Shippers' Group (Shipper's Group),²⁰ and the Department of Public Utilities of the Commonwealth of Massachusetts (Massachusetts DPU) filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.²¹

18. Maritimes filed comments asserting that there may be a discrepancy in the design capacity information included in the filing regarding the joint facilities. After reviewing PNGTS's Revised Appendix E, Maritimes filed additional comments stating that it had not identified any material discrepancies between the design of the joint facilities and the design reflected in PNGTS's revised flow diagrams. The New Hampshire PUC and the Massachusetts DPU filed general comments requesting that the Commission either reject PNGTS's petition or condition approval in a manner which ensures that existing firm capacity holders on PNGTS will not be economically harmed. CAPP filed comments stating that to the extent the Commission is being asked to resolve facts that are directly related to rate issues, it may be premature for the Commission to resolve those issues in the context of the petition for declaratory order.

19. The Shippers' Group filed a protest asserting that PNGTS's request is an unsupported request to abandon certificated capacity and should be denied. PNGTS filed a motion for leave to answer and an answer to the Shippers' Group, the Shippers' Group filed an answer to PNGTS, and PNGTS filed an answer to the Shippers' Group. Although the Commission's Rules of Practice and Procedure do not permit answers to

²⁰ The Shippers' Group members are Bay State Gas Company, Northern Utilities, Inc.; DTE Energy Trading, Inc., H.Q. Energy Services (U.S.) Inc., New Page Corporation, and Wausau Papers of New Hampshire, Inc.

²¹ 18 C.F.R. § 385.214 (2007).

protests or answers,²² the Commission finds good cause to waive Rule 213(a)²³ and admit the answers provided by PNGTS and the Shippers' Group because they provide information that has assisted us in our decision making.

A. The Shippers' Group Protest and Answer

20. The Shippers' Group claims that the relief requested by PNGTS is authorization to abandon a substantial quantity of the certificated capacity of the PNGTS system, and the effect of the grant of that relief would be a reduction in PNGTS's cost responsibilities under the at-risk condition imposed upon it at the time its system was certificated. According to the Shippers' Group, this would have adverse rate consequences for PNGTS's long-term shippers, as it would produce a virtually inevitable shift of cost responsibility for a substantial amount of system costs from PNGTS to such shippers in derogation of that at-risk condition and Commission policy without producing corresponding benefits to system customers.

21. The Shippers' Group states that the Commission's July 31 Order found that PNGTS's capacity would be 178,000 in the system's first year of operation and 210,000 Mcf/d in subsequent years based on PNGTS's representations that its affiliate, TQM, would install upstream compression sufficient to provide capacity and service at those levels. Further, it states that "[a]lthough PNGTS raised enough uncertainty as to precisely when TQM would install that compression necessary to achieve the forecasted boost in certificated system design capacity, PNGTS was unmistakably given authority pursuant to section 7 of the NGA to operate its system to provide service at those levels once they were achieved; and its rates were to be based on those increased capacity levels once they were achieved."²⁴ Additionally, the Shippers' Group claims that those levels were achieved by PNGTS following its first year of operation and that PNGTS has been providing service for years at those levels.

22. The Shippers' Group maintains that PNGTS has not shown that its request to abandon capacity is in the public convenience and necessity. It disagrees with PNGTS's assertion that there is somehow a need to remove the threat of legal jeopardy. According to the Shippers' Group, having accepted the joint facilities' certificates, the only legal

²² 18 C.F.R. § 385.213(a)(2) (2007).

²³ See section 385.101(e) (permitting the Commission to waive any provision of Part 385 for good cause).

²⁴ Shippers' Group Protest at 12.

jeopardy that PNGTS may find itself in would arise from PNGTS now determining not to comply with its certificated obligations, including the obligation to continue to offer service at certificated levels.

23. The Shippers' Group also maintains that, to the extent the certificated capacity of the PNGTS system will in fact be reduced as PNGTS alleges, that capacity reduction is entirely a creation of PNGTS's own voluntary actions, and its customers should be fully protected from any cost or rate increase resulting from PNGTS amending its Interconnection Agreement with TQM and entering into the December 18 Settlement with Maritimes. The Shippers' Group questions why PNGTS would voluntarily agree to a contract amendment with its affiliate, TQM, that PNGTS now claims has resulted in its lacking the contractual ability to require TQM to provide sufficient compression after November 1, 2008, to continue to deliver the 210,000 Mcf/d for which it states PNGTS's original contract with TQM provided.²⁵ Similarly, it questions why PNGTS voluntarily entered into the December 18 Settlement with Maritimes that would allegedly result in a substantial reduction in PNGTS's capacity, thereby creating a situation where PNGTS could not satisfy its then existing long-term firm contracts.²⁶

24. In addition, the Shippers' Group claims that the petition ignores the significant adverse rate consequences which would be produced by a substantial reduction in the system capacity units on which it has been required to design its rates.

25. For these reasons, the Shippers' Group requests that PNGTS's petition be denied as an unsupported abandonment that would not serve the public convenience and necessity or, at a minimum, that any grant of PNGTS's petition be conditioned on PNGTS being held to an at-risk condition of at least 210,000 Mcf/d.

B. PNGTS's Answers

26. PNGTS responds that the Shippers' Group fails to contest a single aspect of PNGTS's engineering data and flow diagrams that demonstrate PNGTS's capacity

²⁵ Copies of the original TQM/PNGTS agreement and the amendment thereto were attached to the Shippers' Group protest in Appendices A and B.

²⁶ The Shippers' Group states that at the time the PNGTS/Maritimes settlement was entered into on December 18, 2006, PNGTS was reporting 20-year firm service obligations totaling 194,200 Mcf/d. *See* Shippers' Group March 27 Answer at 8.

limitations beginning November 1, 2008.²⁷ PNGTS also contends that its contractual obligations to TQM and Maritimes should not be ignored and, contrary to the claims of the Shippers' Group, represent a significant value to PNGTS and its shippers. In addition, PNGTS claims that rate issues the Shippers' Group raises in this docket belong in a rate case. In this regard, PNGTS states that it filed a general rate case on April 1, 2008, in Docket No. RP08-306-000, which utilizes billing determinants of 210,000 Mcf/d to derive PNGTS's rates. Given these circumstances, PNGTS asserts that the Shippers' Group contentions concerning rate impacts are misplaced.

IV. Commission Discussion

27. In certificating pipeline projects, the Commission's general practice is to establish a design capacity for the project which represents a pipeline's firm service obligation. Because of the uncertainty involving the timing and impact of additional compression to be installed by TQM in order to accommodate additional Maritimes' supplies, the Commission's orders authorizing the PNGTS facilities ultimately did not establish a system-wide certificated capacity level after the first year of service. Rather, the September 24 Order deferred this issue to PNGTS's rate case.²⁸ That rate case was resolved by an uncontested settlement that did not establish a certificated capacity for the PNGTS system.²⁹ Under these limited circumstances, we do not agree with the Shippers' Group that it is necessary for PNGTS to file an abandonment application in order to obtain the relief requested. We find that PNGTS's request for declaratory order is an appropriate vehicle to resolve the matters raised herein. We also find that it is appropriate to determine the certificated level of service across the PNGTS system going forward because it will remove uncertainty and provide transparency to the market, including to PNGTS and its shippers.

28. We have reviewed PNGTS's engineering information and conclude that PNGTS will be incapable of transporting gas volumes in excess of 168,000 Mcf/d on a firm year-

²⁷ In its answer, the Shippers' Group states that since it was unable to obtain this CEII engineering data from PNGTS, several requests for this data have been submitted to the Commission by Group members and their representatives. Shippers' Group March 27 Answer at n.3. The Shippers' Group states that it reserves the right to supplement its comments once it obtains this data. The Commission has granted these CEII requests but has received no additional comments from the Shippers' Group.

²⁸ September 24 Order at 62,146.

²⁹ *Portland Natural Transmission System*, 102 FERC ¶ 61,026 (2003).

round basis from Pittsburg to Dracut after Maritimes' Phase IV Expansion facilities are placed in service. The capacity of the PNGTS system is dependent upon both the receipt pressure from TQM at Pittsburg and the minimum delivery pressure from PNGTS at the interconnection of its solely-owned system and the joint facilities at Westbrook.

Currently, TQM is only contractually obligated to maintain a receipt pressure of 1,255 psig to PNGTS at Pittsburg. When Maritimes' Phase IV Expansion is placed in service, the minimum delivery pressure from PNGTS to the joint facilities at Westbrook will be higher than the current design pressure. The result of these changes will prevent PNGTS from transporting volumes in excess of 168,000 Mcf/d from Pittsburg through Westbrook to Dracut. Thus, without either additional compression on TQM's system or a lower design delivery pressure from PNGTS into the joint facilities at Westbrook, we conclude that PNGTS will be incapable of transporting volumes in excess of 168,000 Mcf/d on a firm year-round basis from Pittsburg to Dracut after the in-service date of Maritimes' Phase IV Expansion.³⁰

29. We next determine whether adopting 168,000 Mcf/d as the certificated capacity level for the PNGTS system will be in the public convenience and necessity. We are aware, as pointed out by the Shippers' Group, that PNGTS historically has been able to provide service in excess of this level. In evaluating PNGTS's request here, our primary focus is whether natural gas service will be jeopardized. Our review of the record indicates that there is no basis to conclude that requiring PNGTS to operate its system at a capacity level greater than 168,000 is needed to continue to serve current or anticipated customers. PNGTS has indicated that it will have more than sufficient capacity to meet all of its contractual obligations for service after October 31, 2008, that are now in effect, and that it is not aware of any interest for additional firm service that would exceed the 168,000 Mcf/d capacity level. Significantly, no party to this proceeding takes issue with these assertions. Under these circumstances, we conclude that it is appropriate to find that PNGTS's year-round annual certificated system-wide capacity on the in-service date of the Maritime's Phase IV project will be 168,000 Mcf/d.

³⁰ This finding does not, however, affect PNGTS's capacity rights of 210,000 Mcf/d in the joint facilities between Westbrook and Dracut as defined by the Definitive Agreements between PNGTS and Maritimes. The flow diagrams attached as Exhibit E to the petition show that PNGTS's capacity rights of 210,000 Mcf/d in the joint facilities remain unchanged by this petition.

30. However, our finding here is limited to determining the certificated capacity of the PNGTS system on the date Maritimes' Phase IV Expansion is placed in service.³¹ Our action here does not prejudge the impact of our decision on PNGTS's rates and we find that any rate issues associated with our decision here, including the appropriate determinants to use to design PNGTS's rates, are more appropriately determined in PNGTS's next rate proceeding.³²

31. At hearing held on June 19, 2008, the Commission on its own motion, received and made a part of the record all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) PNGTS's petition for declaratory order is granted as discussed in the body of this order.

(B) The Shippers' Group protest is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³¹ Because we find that natural gas service will be not be jeopardized by adopting 168,000 Mcf/d as the certificated capacity across the PNGTS system, we do not find it necessary here to consider and rule on issues raised by the Shippers' Group regarding the reasonableness of PNGTS's actions in entering into the amended interconnection agreement with TQM and entering into the December 18 Settlement with Maritimes.

³² This action is consistent with the Commission's practice in abandonment proceedings. *See, e.g., Northern Natural Gas Co.*, 119 FERC ¶ 61, 035, at P 23 (2007) ("the impact of the abandonment on Northern's applicable rates will be addressed when it files its next section 4 rate case"). We note that PNGTS filed a NGA section 4 general rate case on April 1, 2008, that has been set for hearing. However, the test period for that rate case ends on September 30, 2008, prior to the proposed in-service date of the Maritimes Phase IV Expansion of November 1, 2008. *See Portland Natural Transmission System*, 123 FERC ¶ 61,108 (2008).